IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7442 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AYASHABIBI W/O ISMAIL K KAPARA

Versus

KESHAVDAS K PARVARI THROUGH HERIS-GOMABAI K PARVARI

Appearance:

MR SK BUKHARI for Petitioner

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/04/2000

ORAL JUDGEMENT

#. It is really shocking that the Deputy Secretary even has not cared to refer to the judgment of the District Judge, Panchmahals at Godhara in Regular Civil Appeal No.75 of 1972 decided on 31.7.74, though a copy of the

same was produced before it, in its impugned order. The Civil Court has decided interse the parties, i.e. the petitioner and respondent herein that the petitioner is in possession of the land in dispute and the respondents, including the respondents herein were restrained permanently from disturbing the possession of the petitioner of the suit land or from taking the possession from the petitioner. This was very relevant and material piece of evidence which has to be considered by the Deputy Secretary before passing of that order.

#. I find prima-facie merits in the contention of the learned counsel for the petitioner that after the decision of the District Court in the Appeal interse the parties the revision application before the Deputy Secretary had become infructuous. However, I am not giving any final verdict on this contention made by learned counsel for the petitioner as I consider it to be appropriate to remand this matter back to the Deputy Secretary to pass final order after considering the judgment given by the District Judge, Godhara, in Regular Civil Appeal No.75 of 1972.

#. Accordingly, this special civil application succeeds and the same is allowed and the order of the Deputy Secretary, Revenue Department (Appeals), Gujarat State, Ahmedabad, in Revision Application No.S.R.D./HKM/305/86 dated 4.1.88, Annexure-F, is quashed and set aside and the matter is remanded back to that authority to decide the same afresh after hearing the parties. Rule is made absolute accordingly with no order as to costs.

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(sunil)